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June 10, 2021

**VIA ECF**

Honorable Andrew L. Carter Jr.  
United States District Court  
Southern District of New York  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: *Lovati et al. v. Petroleos de Venezuela, S.A.*, 19-Civ-04799-AJC**

Your Honor:

We represent Plaintiffs in this case. Plaintiffs filed this lawsuit on May 23, 2019. (D.E. 1.) In the two years since, Defendant has filed three separate Rule 12 motions to dismiss the complaint. (D.E. 13, D.E. 24 & D.E. 49.) The Court denied the first two motions. (D.E. 21 & D.E. 37.) The third remains pending before Your Honor, along with a protective cross-motion to amend the complaint that Plaintiffs filed out of an abundance of caution. (D.E. 56.) These two pending cross-motions were fully briefed as of January 5, 2021. (D.E. 59.) No discovery has been served in this case and, indeed, Plaintiffs believe none is necessary.

Rather, as noted in their cross-motion to amend the complaint, Plaintiffs are anxious to proceed with summary judgment practice. (D.E. 57 at 6 & 11 n.7.) Plaintiffs are confident that they can submit undisputed evidence establishing their ownership of the bonds at issue in the complaint, Defendant's default of its obligations on such bonds, Plaintiffs' contractual authorization to enforce such defaults, and the resulting damages. We submit there is no need for discovery on these facts, which together will support the entry of judgment. *See, e.g., Crespo v. Republic of Argentina*, No. 07-cv-11457 (TPG), 2015 WL 4998552, at \*2 (S.D.N.Y. Aug. 21, 2015).

As Your Honor observed last September in the Opinion and Order denying Defendant's second Rule 12 motion, Plaintiffs "have an interest in proceeding quickly" given the competing claims of other potential judgment creditors. (D.E. 37 at 10.) Given the pending cross-motions, however, Plaintiffs are hesitant to request a pre-summary judgment motion conference pursuant to

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Your Honor's rules. In particular, Plaintiffs are uncertain as to which complaint should serve as the basis for summary judgment—the extant May 23, 2019 complaint or an amended complaint consistent with the draft that Plaintiffs proposed in the event the Court disagrees that the original complaint did not need to allege standing to sue. (*See* D.E. 57 at 11 (“Should the Court conclude, however, that the Complaint must allege standing based on the authorization letter, we respectfully request that the Court permit Plaintiffs to amend accordingly consistent with the above authority so as to definitively foreclose the purported pleading deficiency identified in Defendant’s motion.”).)

As explained in their briefing on the cross-motions (D.E. 57 & 59), Plaintiffs are confident that both the extant complaint and the proposed amendment are sufficient under settled law from this Circuit. Absent guidance from the Court as to which pleading should guide further proceedings, however, Plaintiffs believe summary judgment practice would be premature. We would welcome the opportunity to discuss the parties’ pending motions with the Court at a convenient time, including in conjunction with a pre-motion conference for Plaintiffs’ proposed summary judgment motion.

Very truly yours,

/s/ Anthony J. Costantini  
Anthony J. Costantini

AJC: dtm

cc: Counsel of record (VIA ECF)